IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 258 OF 1988
With
CROSS OBJECTIONS

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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BECHARBHAI GANDABHAI & ORS. - Appellant(s)
Versus
RATHOD GEMABHAI SHANKERBHAI OF CHUVA - Respondent(s)

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Appearance :
None for Appellant(s).
Ms. K.J. Brahmbhatt for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/03/2007

ORAL JUDGMENT

1. Despite service of notice on appellants Nos.1 and 3 and deletion of appellant No.2, none appears for the appellants.

Ms. K.J. Brahmbhatt, learned Counsel for the respondent.

As none appears for the appellants, the appeal filed by them

deserves to and is, accordingly, dismissed for want of prosecution.

2. The respondent has filed his cross objections under Rule 22 of Order XLI of the Code of Civil Procedure, 1908 ("the Code" for short), which provides that if an appeal is dismissed for want of prosecution, the cross objections will still have to be decided by the Court.

The cross objections are taken up for consideration.

3. Present is a suit for possession of house and *mesne* profits. The defendants appeared before the Court and contested the matter, after hearing the parties, the learned trial Court decreed the suit, but, refused to grant any *mesne* profits on the ground that the parties were relations and it would, therefore, not be necessary to grant the decree for *mesne* profits. The defendants, being aggrieved by the said judgement and decree, preferred regular appeal under Section 96 of the Code and upon service of the notice, the plaintiff filed his cross objections requesting the Court that a decree for *mesne* profits be granted.

3.1 The learned Appellate Court dismissed the appeal filed by the defendants, but, however, allowed the cross objections and awarded a sum of Re.1/- per month towards the *mesne* profits, holding*, inter alia,* that the plaintiff could not lead evidence to substantiate that what could be the real *mesne* profits. The parties are again before this court.

4. Ms.Brahmbhatt, learned Counsel for the respondent, referring to Rule 12 of Order XX of the Code, submits that when a suit for possession and *mesne* profits is filed, then, while granting a decree for possession, the Court may also grant a decree for *mesne* profits. According to her, if the Court is satisfied that on the availability of the evidence, the *mesne* profits can be quantified or be decided, then, the

Court may decide such *mesne* profits, but, in a case where the Court is unable to decide the quantum of *mesne* profits/rate of *mesne* profits, then, the Court must issue a direction under Rule 12 of Order XX of the Code, directing an inquiry as to such *mesne* profits.

5. Rule 12 of Order XX of the Code provides that where a suit is for the recovery of possession of immovable property and for rent or *mesne* profits, the Court may pass a decree for the possession of the property; for the rents which have accrued, etc.; for the *mesne* profits or directing an inquiry to such *mesne* profits; the Court may direct an inquiry as to rent and *mesne* profits from the institution of the suit until the delivery of the possession to the decree holder.

6. In the present case, it was incumbent upon the learned trial Court to pass the decree for *mesne* profits or give cogent reasons for refusing the *mesne* profits. The learned trial Court could not cursorily reject the claim and in the considered opinion of this Court, the learned first Appellate Court could not award nominal damages in the form of *mesne* profits. The decree relating to grant of Re.1/- as *mesne* profits per month deserves to be and is, accordingly, set aside and it is hereby directed that in accordance with Rule 12 of Order XX of the Code, the learned trial Court, on an application by the plaintiff, shall make an inquiry into such *mesne* profits from the date of the institution of the suit until delivery of the possession to the decree-holder.

7. The cross objections to the extent indicated above are allowed. The cross objections also stand disposed of.

[R.S.Garg, J.]

*kamlesh**